

## § 1300.04

## 21 CFR Ch. II (4–1–18 Edition)

facsimile that meets the requirements of part 1306 of this chapter including a manual signature.

*Password* means a secret, typically a character string (letters, numbers, and other symbols), that a person memorizes and uses to authenticate his identity.

*PDA* means a Personal Digital Assistant, a handheld computer used to manage contacts, appointments, and tasks.

*Pharmacy application provider* means an entity that develops or markets software that manages the receipt and processing of electronic prescriptions.

*Private key* means the key of a key pair that is used to create a digital signature.

*Public key* means the key of a key pair that is used to verify a digital signature. The public key is made available to anyone who will receive digitally signed messages from the holder of the key pair.

*Public Key Infrastructure (PKI)* means a structure under which a certification authority verifies the identity of applicants; issues, renews, and revokes digital certificates; maintains a registry of public keys; and maintains an up-to-date certificate revocation list.

*Readily retrievable* means that certain records are kept by automatic data processing applications or other electronic or mechanized recordkeeping systems in such a manner that they can be separated out from all other records in a reasonable time and/or records are kept on which certain items are asterisked, redlined, or in some other manner visually identifiable apart from other items appearing on the records.

*SAS 70 Audit* means a third-party audit of a technology provider that meets the American Institute of Certified Public Accountants (AICPA) Statement of Auditing Standards (SAS) 70 criteria.

*Signing function* means any keystroke or other action used to indicate that the practitioner has authorized for transmission and dispensing a controlled substance prescription. The signing function may occur simultaneously with or after the completion of the two-factor authentication protocol that meets the requirements of part 1311 of this chapter. The signing func-

tion may have different names (e.g., approve, sign, transmit), but it serves as the practitioner's final authorization that he intends to issue the prescription for a legitimate medical reason in the normal course of his professional practice.

*SysTrust* means a professional service performed by a qualified certified public accountant to evaluate one or more aspects of electronic systems.

*Third-party audit* means an independent review and examination of records and activities to assess the adequacy of system controls, to ensure compliance with established policies and operational procedures, and to recommend necessary changes in controls, policies, or procedures.

*Token* means something a person possesses and controls (typically a key or password) used to authenticate the person's identity.

*Trusted agent* means an entity authorized to act as a representative of a certification authority or credential service provider in confirming practitioner identification during the enrollment process.

*Valid prescription* means a prescription that is issued for a legitimate medical purpose by an individual practitioner licensed by law to administer and prescribe the drugs concerned and acting in the usual course of the practitioner's professional practice.

*WebTrust* means a professional service performed by a qualified certified public accountant to evaluate one or more aspects of Web sites.

[75 FR 16304, Mar. 31, 2010]

### § 1300.04 Definitions relating to the dispensing of controlled substances by means of the Internet.

(a) Any term not defined in this part or elsewhere in this chapter shall have the definition set forth in sections 102 and 309 of the Act (21 U.S.C. 802, 829).

(b) The term *covering practitioner* means, with respect to a patient, a practitioner who conducts a medical evaluation (other than an in-person medical evaluation) at the request of a practitioner who:

(1) Has conducted at least one in-person medical evaluation of the patient or an evaluation of the patient through

the practice of telemedicine, within the previous 24 months; and

(2) Is temporarily unavailable to conduct the evaluation of the patient.

(c) The term *deliver, distribute, or dispense by means of the Internet* refers, respectively, to any delivery, distribution, or dispensing of a controlled substance that is caused or facilitated by means of the Internet.

(d) The term *filling new prescriptions for controlled substances in Schedule III, IV, or V* means filling a prescription for an individual for a controlled substance in Schedule III, IV, or V, if:

(1) The pharmacy dispensing that prescription has previously dispensed to the patient a controlled substance other than by means of the Internet and pursuant to the valid prescription of a practitioner that meets the applicable requirements of subsections (b) and (c) of section 309 of the Act (21 U.S.C. 829) and §§1306.21 and 1306.22 of this chapter (for purposes of this definition, such a prescription shall be referred to as the “original prescription”);

(2) The pharmacy contacts the practitioner who issued the original prescription at the request of that individual to determine whether the practitioner will authorize the issuance of a new prescription for that individual for the controlled substance described in paragraph (d)(1) of this section (*i.e.*, the same controlled substance as described in paragraph (d)(1)); and

(3) The practitioner, acting in the usual course of professional practice, determines there is a legitimate medical purpose for the issuance of the new prescription.

(e) The term *homepage* means the opening or main page or screen of the Web site of an online pharmacy that is viewable on the Internet.

(f) The term *in-person medical evaluation* means a medical evaluation that is conducted with the patient in the physical presence of the practitioner, without regard to whether portions of the evaluation are conducted by other health professionals. Nothing in this paragraph shall be construed to imply that one in-person medical evaluation demonstrates that a prescription has been issued for a legitimate medical

purpose within the usual course of professional practice.

(g) The term *Internet* means collectively the myriad of computer and telecommunications facilities, including equipment and operating software, which comprise the interconnected worldwide network of networks that employ the Transmission Control Protocol/Internet Protocol, or any predecessor or successor protocol to such protocol, to communicate information of all kinds by wire or radio.

(h) The term *online pharmacy* means a person, entity, or Internet site, whether in the United States or abroad, that knowingly or intentionally delivers, distributes, or dispenses, or offers or attempts to deliver, distribute, or dispense, a controlled substance by means of the Internet. The term includes, but is not limited to, a pharmacy that has obtained a modification of its registration pursuant to §§1301.13 and 1301.19 of this chapter that currently authorizes it to dispense controlled substances by means of the Internet, regardless of whether the pharmacy is currently dispensing controlled substances by means of the Internet. The term does not include:

(1) Manufacturers or distributors registered under subsection (a), (b), (d), or (e) of section 303 of the Act (21 U.S.C. 823(a), (b), (d), or (e)) (§1301.13 of this chapter) who do not dispense controlled substances to an unregistered individual or entity;

(2) Nonpharmacy practitioners who are registered under section 303(f) of the Act (21 U.S.C. 823(f)) (§1301.13 of this chapter) and whose activities are authorized by that registration;

(3) Any hospital or other medical facility that is operated by an agency of the United States (including the Armed Forces), provided such hospital or other facility is registered under section 303(f) of the Act (21 U.S.C. 823(f)) (§1301.13 of this chapter);

(4) A health care facility owned or operated by an Indian tribe or tribal organization, only to the extent such facility is carrying out a contract or compact under the Indian Self-Determination and Education Assistance Act;

## § 1300.04

## 21 CFR Ch. II (4–1–18 Edition)

(5) Any agent or employee of any hospital or facility referred to in paragraph (h)(3) or (h)(4) of this section, provided such agent or employee is lawfully acting in the usual course of business or employment, and within the scope of the official duties of such agent or employee, with such hospital or facility, and, with respect to agents or employees of health care facilities specified in paragraph (h)(4) of this section, only to the extent such individuals are furnishing services pursuant to the contracts or compacts described in such paragraph;

(6) Mere advertisements that do not attempt to facilitate an actual transaction involving a controlled substance;

(7) A person, entity, or Internet site that is not in the United States and does not facilitate the delivery, distribution, or dispensing of a controlled substance by means of the Internet to any person in the United States;

(8) A pharmacy registered under section 303(f) of the Act (21 U.S.C. 823(f)) (§1301.13 of this chapter) whose dispensing of controlled substances via the Internet consists solely of:

(i) Refilling prescriptions for controlled substances in Schedule III, IV, or V, as defined in paragraph (k) of this section; or

(ii) Filling new prescriptions for controlled substances in Schedule III, IV, or V, as defined in paragraph (d) of this section;

(9)(i) Any registered pharmacy whose delivery, distribution, or dispensing of controlled substances by means of the Internet consists solely of filling prescriptions that were electronically prescribed in a manner authorized by this chapter and otherwise in compliance with the Act.

(ii) A registered pharmacy will be deemed to meet this exception if, in view of all of its activities other than those referred to in paragraph (h)(9)(i) of this section, it would fall outside the definition of an online pharmacy; or

(10)(i) Any registered pharmacy whose delivery, distribution, or dispensing of controlled substances by means of the Internet consists solely of the transmission of prescription information between a pharmacy and an automated dispensing system located

in a long term care facility when the registration of the automated dispensing system is held by that pharmacy as described in §§1301.17 and 1301.27 and the pharmacy is otherwise complying with this chapter.

(ii) A registered pharmacy will be deemed to meet this exception if, in view of all of its activities other than those referred to in paragraph (h)(10)(i) of this section, it would fall outside the definition of an online pharmacy.

(i) Effective January 15, 2010, the term *practice of telemedicine* means the practice of medicine in accordance with applicable Federal and State laws by a practitioner (other than a pharmacist) who is at a location remote from the patient and is communicating with the patient, or health care professional who is treating the patient, using a telecommunications system referred to in section 1834(m) of the Social Security Act (42 U.S.C. 1395m(m)), which practice falls within a category listed in the following paragraphs (i)(1) through (7):

(1) *Treatment in a hospital or clinic.* The practice of telemedicine is being conducted while the patient is being treated by, and physically located in, a hospital or clinic registered under section 303(f) of the Act (21 U.S.C. 823(f)) by a practitioner acting in the usual course of professional practice, who is acting in accordance with applicable State law, and who is registered under section 303(f) of the Act (21 U.S.C. 823(f)) in the State in which the patient is located, unless the practitioner:

(i) Is exempted from such registration in all States under section 302(d) of the Act (21 U.S.C. 822(d)); or

(ii) Is an employee or contractor of the Department of Veterans Affairs who is acting in the scope of such employment or contract, and registered under section 303(f) of the Act (21 U.S.C. 823(f)) in any State or is utilizing the registration of a hospital or clinic operated by the Department of Veterans Affairs registered under section 303(f);

(2) *Treatment in the physical presence of a practitioner.* The practice of telemedicine is being conducted while the patient is being treated by, and in the physical presence of, a practitioner

acting in the usual course of professional practice, who is acting in accordance with applicable State law, and who is registered under section 303(f) of the Act (21 U.S.C. 823(f)) in the State in which the patient is located, unless the practitioner:

(i) Is exempted from such registration in all States under section 302(d) of the Act (21 U.S.C. 822(d)); or

(ii) Is an employee or contractor of the Department of Veterans Affairs who is acting in the scope of such employment or contract, and registered under section 303(f) of the Act (21 U.S.C. 823(f)) in any State or is using the registration of a hospital or clinic operated by the Department of Veterans Affairs registered under section 303(f);

(3) *Indian Health Service or tribal organization.* The practice of telemedicine is being conducted by a practitioner who is an employee or contractor of the Indian Health Service, or is working for an Indian tribe or tribal organization under its contract or compact with the Indian Health Service under the Indian Self-Determination and Education Assistance Act; who is acting within the scope of the employment, contract, or compact; and who is designated as an Internet Eligible Controlled Substances Provider by the Secretary of Health and Human Services under section 311(g)(2) of the Act (21 U.S.C. 831(g)(2));

(4) *Public health emergency declared by the Secretary of Health and Human Services.* The practice of telemedicine is being conducted during a public health emergency declared by the Secretary of Health and Human Services under section 319 of the Public Health Service Act (42 U.S.C. 247d), and involves patients located in such areas, and such controlled substances, as the Secretary of Health and Human Services, with the concurrence of the Administrator, designates, provided that such designation shall not be subject to the procedures prescribed by the Administrative Procedure Act (5 U.S.C. 551-559 and 701-706);

(5) *Special registration.* The practice of telemedicine is being conducted by a practitioner who has obtained from the Administrator a special registration

under section 311(h) of the Act (21 U.S.C. 831(h));

(6) *Department of Veterans Affairs medical emergency.* The practice of telemedicine is being conducted:

(i) In a medical emergency situation:

(A) That prevents the patient from being in the physical presence of a practitioner registered under section 303(f) of the Act (21 U.S.C. 823(f)) who is an employee or contractor of the Veterans Health Administration acting in the usual course of business and employment and within the scope of the official duties or contract of that employee or contractor;

(B) That prevents the patient from being physically present at a hospital or clinic operated by the Department of Veterans Affairs registered under section 303(f) of the Act (21 U.S.C. 823(f));

(C) During which the primary care practitioner of the patient or a practitioner otherwise practicing telemedicine within the meaning of this paragraph is unable to provide care or consultation; and

(D) That requires immediate intervention by a health care practitioner using controlled substances to prevent what the practitioner reasonably believes in good faith will be imminent and serious clinical consequences, such as further injury or death; and

(ii) By a practitioner that:

(A) Is an employee or contractor of the Veterans Health Administration acting within the scope of that employment or contract;

(B) Is registered under section 303(f) of the Act (21 U.S.C. 823(f)) in any State or is utilizing the registration of a hospital or clinic operated by the Department of Veterans Affairs registered under section 303(f); and

(C) Issues a controlled substance prescription in this emergency context that is limited to a maximum of a five-day supply which may not be extended or refilled; or

(7) *Other circumstances specified by regulation.* The practice of telemedicine is being conducted under any other circumstances that the Administrator and the Secretary of Health and Human Services have jointly, by regulation, determined to be consistent

## § 1300.05

with effective controls against diversion and otherwise consistent with the public health and safety.

(j) *Temporary definition of practice of telemedicine.* Prior to January 15, 2010, or as otherwise specified by regulation prior to that date, instead of the definition in paragraph (i), the term *practice of telemedicine* means the practice of medicine in accordance with applicable Federal and State laws by a practitioner (as that term is defined in section 102 of the Act (21 U.S.C. 802)) (other than a pharmacist) who is at a location remote from the patient and is communicating with the patient, or health care professional who is treating the patient, using a telecommunications system referred to in section 1834(m) of the Social Security Act (42 U.S.C. 1395m(m)), if the practitioner is using an interactive telecommunications system that satisfies the requirements of section 410.78(a)(3) of title 42, Code of Federal Regulations.

(k) The term *refilling prescriptions for controlled substances in Schedule III, IV, or V*:

(1) Means the dispensing of a controlled substance in Schedule III, IV, or V in accordance with refill instructions issued by a practitioner as part of a valid prescription that meets the requirements of subsections (b) and (c) of section 309 of the Act (21 U.S.C. 829) and §§ 1306.21 and 1306.22 of this chapter, as appropriate; and

(2) Does not include the issuance of a new prescription to an individual for a controlled substance that individual was previously prescribed.

(1)(1) The term *valid prescription* means a prescription that is issued for a legitimate medical purpose in the usual course of professional practice by:

(i) A practitioner who has conducted at least one in-person medical evaluation of the patient; or

(ii) A covering practitioner.

(2) Nothing in this paragraph (1) shall be construed to imply that one in-person medical evaluation demonstrates that a prescription has been issued for a legitimate medical purpose within the usual course of professional practice.

[74 FR 15619, Apr. 6, 2009]

## 21 CFR Ch. II (4–1–18 Edition)

### § 1300.05 Definitions relating to the disposal of controlled substances.

(a) Any term not defined in this part or elsewhere in this chapter shall have the definition set forth in section 102 of the Act (21 U.S.C. 802).

(b) As used in part 1317 of this chapter, the following terms shall have the meanings specified:

*Employee* means an employee as defined under the general common law of agency. Some of the factors relevant to the determination of employee status include: The hiring party's right to control the manner and means by which the product is accomplished; the skill required; the source of the instrumentalities and tools; the location of the work; the duration of the relationship between the parties; whether the hiring party has the right to assign additional projects to the hired party; the extent of the hired party's discretion over when and how long to work; the method of payment; the hired party's role in hiring and paying assistants; whether the work is part of the regular business of the hiring party; whether the hiring party is in business; the provision of employee benefits; and the tax treatment of the hired party. Other applicable factors may be considered and no one factor is dispositive. The following criteria will determine whether a person is an *employee* of a registrant for the purpose of disposal: The person is directly paid by the registrant; subject to direct oversight by the registrant; required, as a condition of employment, to follow the registrant's procedures and guidelines pertaining to the handling of controlled substances; subject to receive a performance rating or performance evaluation on a regular/routine basis from the registrant; subject to disciplinary action by the registrant; and required to render services at the registrant's registered location.

*Law enforcement officer* means a person who is described in paragraph (1), (2) or (3) of this definition:

(1) Meets all of the following criteria:

(i) Employee of either a law enforcement agency, or law enforcement component of a Federal agency;

(ii) Is under the direction and control of a Federal, State, tribal, or local government;